

108TH CONGRESS
2D SESSION

H. R. 4351

To amend the Internal Revenue Code of 1986 to restrict the use of abusive tax shelters.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2004

Mr. EMANUEL introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to restrict the use of abusive tax shelters.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tax Shelter Promoter
5 Liability Act of 2004”.

6 **SEC 2. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.**

7 (a) PENALTY FOR PROMOTING ABUSIVE TAX SHEL-
8 TERS.—Section 6700 of the Internal Revenue Code of
9 1986 (relating to promoting abusive tax shelters, etc.) is
10 amended—

1 (1) by redesignating subsections (b) and (c) as
2 subsections (d) and (e), respectively,

3 (2) by striking “a penalty” and all that follows
4 through the period in the first sentence of subsection
5 (a) and inserting “a penalty determined under sub-
6 section (b)”, and

7 (3) by inserting after subsection (a) the fol-
8 lowing new subsections:

9 “(b) AMOUNT OF PENALTY; CALCULATION OF PEN-
10 ALTY; LIABILITY FOR PENALTY.—

11 “(1) AMOUNT OF PENALTY.—The amount of
12 the penalty imposed by subsection (a) shall not ex-
13 ceed 150 percent of the gross income derived (or to
14 be derived) from such activity by the person or per-
15 sons subject to such penalty.

16 “(2) CALCULATION OF PENALTY.—The penalty
17 amount determined under paragraph (1) shall be
18 calculated with respect to each instance of an activ-
19 ity described in subsection (a), each instance in
20 which income was derived by the person or persons
21 subject to such penalty, and each person who par-
22 ticipated in such an activity.

23 “(3) LIABILITY FOR PENALTY.—If more than 1
24 person is liable under subsection (a) with respect to
25 such activity, all such persons shall be jointly and

1 severally liable for the penalty under such sub-
2 section.

3 “(c) PENALTY NOT DEDUCTIBLE.—The payment of
4 any penalty imposed under this section or the payment
5 of any amount to settle or avoid the imposition of such
6 penalty shall not be considered an ordinary and necessary
7 expense in carrying on a trade or business for purposes
8 of this title and shall not be deductible by the person who
9 is subject to such penalty or who makes such payment.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to activities after the date of the
12 enactment of this Act.

13 **SEC. 3. PENALTY FOR AIDING AND ABETTING THE UNDER-**
14 **STATEMENT OF TAX LIABILITY.**

15 (a) IN GENERAL.—Section 6701(a) of the Internal
16 Revenue Code of 1986 (relating to imposition of penalty)
17 is amended—

18 (1) by inserting “the tax liability or” after “re-
19 spect to,” in paragraph (1),

20 (2) by inserting “aid, assistance, procurement,
21 or advice with respect to such” before “portion”
22 both places it appears in paragraphs (2) and (3),
23 and

1 (3) by inserting “instance of aid, assistance,
2 procurement, or advice or each such” before “docu-
3 ment” in the matter following paragraph (3).

4 (b) AMOUNT OF PENALTY.—Subsection (b) of section
5 6701 of such Code (relating to penalties for aiding and
6 abetting understatement of tax liability) is amended to
7 read as follows:

8 “(b) AMOUNT OF PENALTY; CALCULATION OF PEN-
9 ALTY; LIABILITY FOR PENALTY.—

10 “(1) AMOUNT OF PENALTY.—The amount of
11 the penalty imposed by subsection (a) shall not ex-
12 ceed 150 percent of the gross income derived (or to
13 be derived) from such aid, assistance, procurement,
14 or advice provided by the person or persons subject
15 to such penalty.

16 “(2) CALCULATION OF PENALTY.—The penalty
17 amount determined under paragraph (1) shall be
18 calculated with respect to each instance of aid, as-
19 sistance, procurement, or advice described in sub-
20 section (a), each instance in which income was de-
21 rived by the person or persons subject to such pen-
22 alty, and each person who made such an understate-
23 ment of the liability for tax.

24 “(3) LIABILITY FOR PENALTY.—If more than 1
25 person is liable under subsection (a) with respect to

1 providing such aid, assistance, procurement, or ad-
2 vice, all such persons shall be jointly and severally
3 liable for the penalty under such subsection.”.

4 (c) PENALTY NOT DEDUCTIBLE.—Section 6701 of
5 such Code is amended by adding at the end the following
6 new subsection:

7 “(g) PENALTY NOT DEDUCTIBLE.—The payment of
8 any penalty imposed under this section or the payment
9 of any amount to settle or avoid the imposition of such
10 penalty shall not be considered an ordinary and necessary
11 expense in carrying on a trade or business for purposes
12 of this title and shall not be deductible by the person who
13 is subject to such penalty or who makes such payment.”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to activities after the date of the
16 enactment of this Act.

17 **SEC. 4. PENALTY FOR FAILURE TO REGISTER TAX SHEL-**
18 **TER.**

19 (a) IN GENERAL.—Section 6707 of the Internal Rev-
20 enue Code of 1986 (relating to failure to furnish informa-
21 tion regarding tax shelters) is amended to read as follows:

1 **“SEC. 6707. FAILURE TO FURNISH INFORMATION ON PO-**
2 **TENTIALLY ABUSIVE TAX SHELTER OR LIST-**
3 **ED TRANSACTION.**

4 “(a) IN GENERAL.—If a person who is required to
5 file a return under section 6111 with respect to any poten-
6 tially abusive tax shelter—

7 “(1) fails to file such return on or before the
8 date prescribed therefor, or

9 “(2) files false or incomplete information with
10 the Secretary with respect to such shelter,
11 such person shall pay a penalty with respect to such return
12 in the amount determined under subsection (b).

13 “(b) AMOUNT OF PENALTY.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), the penalty imposed under subsection (a)
16 with respect to any failure shall be not less than
17 \$50,000 and not more than \$100,000.

18 “(2) LISTED TRANSACTIONS.—The penalty im-
19 posed under subsection (a) with respect to any listed
20 transaction shall be an amount equal to the greater
21 of—

22 “(A) \$200,000, or

23 “(B) 100 percent of the gross income de-
24 rived by such person for providing aid, assist-
25 ance, procurement, advice, or other services
26 with respect to the listed transaction before the

1 date the return including the transaction is
2 filed under section 6111.

3 Subparagraph (B) shall be applied by substituting
4 ‘150 percent’ for ‘100 percent’ in the case of an in-
5 tentional failure or act described in subsection (a).

6 “(c) CERTAIN RULES TO APPLY.—The provisions of
7 section 6707A(d) allowing the Commissioner of Internal
8 Revenue to rescind a penalty under certain circumstances
9 shall apply to any penalty imposed under this section.

10 “(d) POTENTIALLY ABUSIVE TAX SHELTERS AND
11 LISTED TRANSACTIONS.—The terms ‘potentially abusive
12 tax shelter’ and ‘listed transaction’ have the respective
13 meanings given to such terms by section 6707A(c).

14 “(e) PENALTY NOT DEDUCTIBLE.—The payment of
15 any penalty imposed under this section or the payment
16 of any amount to settle or avoid the imposition of such
17 penalty shall not be considered an ordinary and necessary
18 expense in carrying on a trade or business for purposes
19 of this title and shall not be deductible by the person who
20 is subject to such penalty or who makes such payment.”.

21 (b) CLERICAL AMENDMENT.—The item relating to
22 section 6707 in the table of sections for part I of sub-
23 chapter B of chapter 68 of such Code is amended by strik-
24 ing “regarding tax shelters” and inserting “on potentially
25 abusive tax shelter or listed transaction”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to returns the due date for which
 3 is after the date of the enactment of this Act.

4 **SEC. 5. PENALTY FOR FAILING TO MAINTAIN CLIENT LIST.**

5 (a) IN GENERAL.—Subsection (a) of section 6708 of
 6 the Internal Revenue Code of 1986 (relating to failure to
 7 maintain lists of investors in potentially abusive tax shel-
 8 ters) is amended to read as follows:

9 “(a) IMPOSITION OF PENALTY.—

10 “(1) IN GENERAL.—If any person who is re-
 11 quired to maintain a list under section 6112(a) fails
 12 to make such list available upon written request to
 13 the Secretary in accordance with section
 14 6112(b)(1)(A) within 20 business days after the
 15 date of the Secretary’s request, such person shall
 16 pay a penalty of \$10,000 for each day of such fail-
 17 ure after such 20th day. If such person makes avail-
 18 able an incomplete list upon such request, such per-
 19 son shall pay a penalty of \$100 per each omitted
 20 name for each day of such omission after such 20th
 21 day.

22 “(2) GOOD CAUSE EXCEPTION.—No penalty
 23 shall be imposed by paragraph (1) with respect to
 24 the failure on any day if, in the judgment of the
 25 Secretary, such failure is due to good cause.”.

1 (b) PENALTY NOT DEDUCTIBLE.—Section 6708 of
 2 such Code is amended by adding at the end the following
 3 new subsection:

4 “(c) PENALTY NOT DEDUCTIBLE.—The payment of
 5 any penalty imposed under this section or the payment
 6 of any amount to settle or avoid the imposition of such
 7 penalty shall not be considered an ordinary and necessary
 8 expense in carrying on a trade or business for purposes
 9 of this title and shall not be deductible by the person who
 10 is subject to such penalty or who makes such payment.”.

11 (c) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to requests made by the Secretary
 13 of the Treasury after the date of the enactment of this
 14 Act.

15 **SEC. 6. PENALTY FOR FAILING TO DISCLOSE POTENTIALLY**
 16 **ABUSIVE TAX SHELTER.**

17 (a) IN GENERAL.—Part I of subchapter B of chapter
 18 68 of the Internal Revenue Code of 1986 (relating to as-
 19 sessable penalties) is amended by inserting after section
 20 6707 the following new section:

21 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE POTEN-**
 22 **TIALLY ABUSIVE TAX SHELTER INFORMA-**
 23 **TION WITH RETURN OR STATEMENT.**

24 “(a) IMPOSITION OF PENALTY.—Any person who
 25 fails to include on any return or statement any informa-

1 tion with respect to a potentially abusive tax shelter which
 2 is required under section 6011 to be included with such
 3 return or statement shall pay a penalty in the amount de-
 4 termined under subsection (b).

5 “(b) AMOUNT OF PENALTY.—

6 “(1) IN GENERAL.—Except as provided in para-
 7 graphs (2) and (3), the amount of the penalty under
 8 subsection (a) shall be \$50,000.

9 “(2) LISTED TRANSACTION.—Except as pro-
 10 vided in paragraph 3, the amount of the penalty
 11 under subsection (a) with respect to a listed trans-
 12 action shall be \$100,000.

13 “(3) INCREASE IN PENALTY FOR INTENTIONAL
 14 NONDISCLOSURE.—In the case of an intentional fail-
 15 ure by any person under subsection (a), the penalty
 16 under paragraph (1) shall be \$100,000 and the pen-
 17 alty under paragraph (2) shall be \$200,000.

18 “(c) DEFINITIONS.—For purposes of this section—

19 “(1) POTENTIALLY ABUSIVE TAX SHELTER.—
 20 The term ‘potentially abusive tax shelter’ means any
 21 transaction with respect to which information is re-
 22 quired to be included with a return or statement, be-
 23 cause the Secretary has determined by regulation or
 24 otherwise that such transaction has a potential for
 25 tax avoidance or evasion.

1 “(2) LISTED TRANSACTION.—Except as pro-
2 vided in regulations, the term ‘listed transaction’
3 means a potentially abusive tax shelter which is the
4 same as, or substantially similar to, a transaction
5 specifically identified by the Secretary as a tax
6 avoidance transaction for purposes of section 6011.

7 “(d) AUTHORITY TO RESCIND PENALTY.—

8 “(1) IN GENERAL.—The Commissioner of In-
9 ternal Revenue may rescind all or any portion of a
10 penalty imposed by this section with respect to any
11 violation if—

12 “(A) the violation is with respect to a po-
13 tentially abusive tax shelter other than a listed
14 transaction,

15 “(B) the person on whom the penalty is
16 imposed has a history of complying with the re-
17 quirements of this title,

18 “(C) it is shown that the violation is due
19 to an unintentional mistake of fact,

20 “(D) imposing the penalty would be
21 against equity and good conscience, and

22 “(E) rescinding the penalty would promote
23 compliance with the requirements of this title
24 and effective tax administration.

1 “(2) DISCRETION.—The exercise of authority
2 under paragraph (1) shall be at the sole discretion
3 of the Commissioner and may be delegated only to
4 the head of the Office of Tax Shelter Analysis. The
5 Commissioner, in the Commissioner’s sole discretion,
6 may establish a procedure to determine if a penalty
7 should be referred to the Commissioner or the head
8 of such Office for a determination under paragraph
9 (1).

10 “(3) NO APPEAL.—Notwithstanding any other
11 provision of law, any determination under this sub-
12 section may not be reviewed in any administrative or
13 judicial proceeding.

14 “(4) RECORDS.—If a penalty is rescinded under
15 paragraph (1), the Commissioner shall place in the
16 file in the Office of the Commissioner the opinion of
17 the Commissioner or the head of the Office of Tax
18 Shelter Analysis with respect to the determination,
19 including—

20 “(A) the facts and circumstances of the
21 transaction,

22 “(B) the reasons for the rescission, and

23 “(C) the amount of the penalty rescinded.

24 A copy of such opinion shall be provided upon writ-
25 ten request to the Committee on Ways and Means

1 of the House of Representatives, the Committee on
2 Finance of the Senate, the Joint Committee on Tax-
3 ation, or the General Accounting Office.

4 “(5) REPORT.—The Commissioner shall each
5 year report to the Committee on Ways and Means
6 of the House of Representatives and the Committee
7 on Finance of the Senate—

8 “(A) a summary of the total number and
9 aggregate amount of penalties imposed, and re-
10 scinded, under this section, and

11 “(B) a description of each penalty re-
12 scinded under this subsection and the reasons
13 therefor.

14 “(e) PENALTY REPORTED TO SEC.—In the case of
15 a person—

16 “(1) which is required to file periodic reports
17 under section 13 or 15(d) of the Securities Ex-
18 change Act of 1934 or is required to be consolidated
19 with another person for purposes of such reports,
20 and

21 “(2) which—

22 “(A) is required to pay a penalty under
23 this section with respect to a listed transaction,

24 “(B) is required to pay a penalty under
25 section 6662A with respect to any potentially

1 abusive tax shelter at a rate prescribed under
2 section 6662A(c), or

3 “(C) is required to pay a penalty under
4 section 6662B with respect to any noneconomic
5 substance transaction,

6 the requirement to pay such penalty shall be disclosed in
7 such reports filed by such person for such periods as the
8 Secretary shall specify. Failure to make a disclosure in
9 accordance with the preceding sentence shall be treated
10 as a failure to which the penalty under subsection (b)(2)
11 applies.

12 “(f) PENALTY IN ADDITION TO OTHER PEN-
13 ALTIES.—The penalty imposed by this section shall be in
14 addition to any other penalty provided by law.

15 “(g) PENALTY NOT DEDUCTIBLE.—The payment of
16 any penalty imposed under this section or the payment
17 of any amount to settle or avoid the imposition of such
18 penalty shall not be considered an ordinary and necessary
19 expense in carrying on a trade or business for purposes
20 of this title and shall not be deductible by the person who
21 is subject to such penalty or who makes such payment.”.

22 (b) CONFORMING AMENDMENT.—The table of sec-
23 tions for part I of subchapter B of chapter 68 of such
24 Code is amended by inserting after the item relating to
25 section 6707 the following:

“Sec. 6707A. Penalty for failure to include potentially abusive tax shelter information with return or statement.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to returns and statements the due
3 date for which is after the date of the enactment of this
4 Act.

5 **SEC. 7. IMPROVED DISCLOSURE OF POTENTIALLY ABUSIVE**
6 **TAX SHELTERS.**

7 (a) IN GENERAL.—Section 6111 of the Internal Rev-
8 enue Code of 1986 (relating to registration of tax shelters)
9 is amended to read as follows:

10 **“SEC. 6111. DISCLOSURE OF POTENTIALLY ABUSIVE TAX**
11 **SHELTERS.**

12 “(a) IN GENERAL.—Each material advisor with re-
13 spect to any potentially abusive tax shelter shall make a
14 return (in such form as the Secretary may prescribe) set-
15 ting forth—

16 “(1) information identifying and describing
17 such shelter,

18 “(2) information describing any potential tax
19 benefits expected to result from the shelter, and

20 “(3) such other information as the Secretary
21 may prescribe.

22 Such return shall be filed not later than the date which
23 is 30 days before the date on which the first sale of such

1 shelter occurs or on any other date specified by the Sec-
2 retary.

3 “(b) DEFINITIONS.—For purposes of this section—

4 “(1) MATERIAL ADVISOR.—

5 “(A) IN GENERAL.—The term ‘material
6 advisor’ means any person—

7 “(i) who provides any material aid,
8 assistance, or advice with respect to de-
9 signing, organizing, managing, promoting,
10 selling, implementing, or carrying out any
11 potentially abusive tax shelter, and

12 “(ii) who directly or indirectly derives
13 gross income in excess of the threshold
14 amount for such aid, assistance, or advice.

15 “(B) THRESHOLD AMOUNT.—For purposes
16 of subparagraph (A), the threshold amount is—

17 “(i) \$50,000 in the case of a poten-
18 tially abusive tax shelter substantially all
19 of the tax benefits from which are provided
20 to natural persons, and

21 “(ii) \$100,000 in any other case.

22 “(2) POTENTIALLY ABUSIVE TAX SHELTER.—

23 The term ‘potentially abusive tax shelter’ has the
24 meaning given to such term by section 6707A(c).

1 “(c) REGULATIONS.—The Secretary may prescribe
2 regulations which provide—

3 “(1) that only 1 person shall be required to
4 meet the requirements of subsection (a) in cases in
5 which 2 or more persons would otherwise be re-
6 quired to meet such requirements,

7 “(2) exemptions from the requirements of this
8 section, and

9 “(3) such rules as may be necessary or appro-
10 priate to carry out the purposes of this section.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) The item relating to section 6111 in the
13 table of sections for subchapter B of chapter 61 of
14 such Code is amended to read as follows:

“Sec. 6111. Disclosure of potentially abusive tax shelters.”.

15 (2)(A) So much of section 6112 of such Code
16 as precedes subsection (c) thereof is amended to
17 read as follows:

18 **“SEC. 6112. MATERIAL ADVISORS OF POTENTIALLY ABU-**
19 **SIVE TAX SHELTERS MUST KEEP CLIENT**
20 **LISTS.**

21 “(a) IN GENERAL.—Each material advisor (as de-
22 fined in section 6111) with respect to any potentially abu-
23 sive tax shelter (as defined in section 6707A(c)) shall
24 maintain, in such manner as the Secretary may by regula-
25 tions prescribe, a list—

1 “(1) identifying each person with respect to
2 whom such advisor acted as such a material advisor
3 with respect to such shelter, and

4 “(2) containing such other information as the
5 Secretary may by regulations require.

6 This section shall apply without regard to whether a mate-
7 rial advisor is required to file a return under section 6111
8 with respect to such transaction.”.

9 (B) Section 6112 of such Code is amended by
10 redesignating subsection (c) as subsection (b).

11 (C) Section 6112(b) of such Code, as redesign-
12 ated by subparagraph (B), is amended—

13 (i) by inserting “written” before “request”
14 in paragraph (1)(A), and

15 (ii) by striking “shall prescribe” in para-
16 graph (2) and inserting “may prescribe”.

17 (D) The item relating to section 6112 in the
18 table of sections for subchapter B of chapter 61 of
19 such Code is amended to read as follows:

 “Sec. 6112. Material advisors of potentially abusive tax shelters
 must keep client lists.”.

20 (3)(A) The heading for section 6708 of such
21 Code is amended to read as follows:

1 **“SEC. 6708. FAILURE TO MAINTAIN CLIENT LISTS WITH RE-**
 2 **SPECT TO POTENTIALLY ABUSIVE TAX SHEL-**
 3 **TERS.”.**

4 (B) The item relating to section 6708 in the
 5 table of sections for part I of subchapter B of chap-
 6 ter 68 of such Code is amended to read as follows:

“Sec. 6708. Failure to maintain client lists with respect to poten-
 tially abusive tax shelters.”.

7 (c) **REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM**
 8 **OF CONFIDENTIALITY.**—Section 6112(b)(1) of such Code,
 9 as redesignated by subsection (b)(2)(B), is amended by
 10 adding at the end the following new flush sentence:

11 “For purposes of this section, the identity of any
 12 person on such list shall not be privileged.”.

13 (d) **EFFECTIVE DATE.**—

14 (1) **IN GENERAL.**—Except as provided in para-
 15 graph (2), the amendments made by this section
 16 shall apply to transactions with respect to which ma-
 17 terial aid, assistance, or advice referred to in section
 18 6111(b)(1)(A)(i) of the Internal Revenue Code of
 19 1986 (as added by this section) is provided after the
 20 date of the enactment of this Act.

21 (2) **NO CLAIM OF CONFIDENTIALITY AGAINST**
 22 **DISCLOSURE.**—The amendment made by subsection
 23 (c) shall take effect as if included in the amend-

1 ments made by section 142 of the Deficit Reduction
2 Act of 1984.

3 **SEC. 8. EXTENSION OF STATUTE OF LIMITATIONS FOR UN-**
4 **DISCLOSED TAX SHELTER.**

5 (a) IN GENERAL.—Section 6501(c) of the Internal
6 Revenue Code of 1986 (relating to exceptions) is amended
7 by adding at the end the following new paragraph:

8 “(10) POTENTIALLY ABUSIVE TAX SHEL-
9 TERS.—If a taxpayer fails to include on any return
10 or statement for any taxable year any information
11 with respect to a potentially abusive tax shelter (as
12 defined in section 6707A(c)) which is required under
13 section 6011 to be included with such return or
14 statement, the time for assessment of any tax im-
15 posed by this title with respect to such transaction
16 shall not expire before the date which is 2 years
17 after the earlier of—

18 “(A) the date on which the Secretary is
19 furnished the information so required; or

20 “(B) the date that a material advisor (as
21 defined in section 6111) meets the requirements
22 of section 6112 with respect to a request by the
23 Secretary under section 6112(b) relating to
24 such transaction with respect to such tax-
25 payer.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years with respect to
3 which the period for assessing a deficiency did not expire
4 before the date of the enactment of this Act.

5 **SEC. 9. PENALTY FOR FAILING TO REPORT INTERESTS IN**
6 **FOREIGN FINANCIAL ACCOUNTS.**

7 (a) IN GENERAL.—Section 5321(a)(5) of title 31,
8 United States Code, is amended to read as follows:

9 “(5) FOREIGN FINANCIAL AGENCY TRANS-
10 ACTION VIOLATION.—

11 “(A) PENALTY AUTHORIZED.—The Sec-
12 retary of the Treasury may impose a civil
13 money penalty on any person who violates, or
14 causes any violation of, any provision of section
15 5314.

16 “(B) AMOUNT OF PENALTY.—

17 “(i) IN GENERAL.—Except as pro-
18 vided in subparagraph (C), the amount of
19 any civil penalty imposed under subpara-
20 graph (A) shall not exceed \$10,000.

21 “(ii) REASONABLE CAUSE EXCEP-
22 TION.—No penalty shall be imposed under
23 subparagraph (A) with respect to any vio-
24 lation if—

1 “(I) such violation was due to
2 reasonable cause, and

3 “(II) the amount of the trans-
4 action or the balance in the account
5 at the time of the transaction was
6 properly reported.

7 “(C) WILLFUL VIOLATIONS.—In the case
8 of any person willfully violating, or willfully
9 causing any violation of, any provision of sec-
10 tion 5314, the amount of the civil penalty im-
11 posed under subparagraph (A) shall be—

12 “(i) not less than \$5,000,

13 “(ii) not more than 50 percent of the
14 amount determined under subparagraph
15 (D), and

16 “(iii) subparagraph (B)(ii) shall not
17 apply.

18 “(D) AMOUNT.—The amount determined
19 under this subparagraph is—

20 “(i) in the case of a violation involving
21 a transaction, the amount of the trans-
22 action, or

23 “(ii) in the case of a violation involv-
24 ing a failure to report the existence of an
25 account or any identifying information re-

1 quired to be provided with respect to an
2 account, the balance in the account at the
3 time of the violation.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to violations occurring after the
6 date of the enactment of this Act.

○